265 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-9092 of 2017(O&M)
Date of decision: 11.05.2017

M/s Vimcon Projects Pvt. Ltd.

... Petitioner

vs.

Pawan Kumar

... Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

* * *

Present : Mr. Saurabh Dalal, Advocate
for the petitioner.

Mr. Rajesh Lamba, Advocate
for the respondent.

* * *

DEEPAK SIBAL, J.(ORAL)

Respondent Pawan Kumar had filed a complaint against the petitioner company under Section 138/142 of the Negotiable Instruments Act, 1881, read with Section 420 IPC through which it was alleged that he had supplied to the petitioner building material to the tune of about Rs.33,44,682/- in part discharge of which liability the petitioner company had issued in his favour two cheques cumulatively for a sum of Rs.24 lakhs which on presentation were dishonoured. The respondent/complainant then got served a legal notice upon the petitioner company but when in spite of the same no payment was received from the petitioner company, the aforesaid complaint was instituted by the respondent.

The petitioner company having pleaded not guilty was put to trial in the course of which respondent-Pawan Kumar appeared as CW-1. After his examination-in-chief, on the request made on behalf of the petitioner company, he was cross examined on 04.11.2016 on which date, after his cross examination, he was discharged. Within a week thereafter i.e. on 11.11.2016, an application was filed on behalf of the petitioner company under Section 311 Cr. P. C seeking to recall the respondent for further cross examination. Such application was considered and rejected by the trial Court on 11.11.2016 itself. The petitioner filed a revision against the aforesaid order before the Sessions Court, Gurgaon which being not maintainable was withdrawn.

It is in the above circumstances that the present petition has been filed to challenge therein the afore referred order dated 11.11.2016 passed by the trial Court at Gurgaon, through which the prayer made by the petitioner company seeking to recall the respondent for further cross examination had been declined.

Counsel for the petitioner has submitted that the petitioner company seeks recalling of respondent Pawan Kumar only to cross examine him to the effect whether the amount in discharge of which the petitioner company is alleged to have signed cheques in favour of the respondent/complainant finds reflection in his income tax returns/accounts. It is further submitted that such cross examination is essential for the just adjudication of the matter.

Learned counsel for the respondent/complainant has vehemently opposes the above prayer on the ground that the petitioner company is only seeking to delay the proceedings.

After considering the above submissions, I am of the opinion that the present revision petition deserves to be allowed. All that the petitioner seeks is to recall the respondent/complainant on one date to cross examine him to the effect whether the amount in discharge of which the petitioner company is alleged to have issued the cheques in question in favour of the respondent finds reflection in his accounts/income tax returns. In my opinion, examination of the respondent on the afore issue would have a bearing on the adjudication of the dispute between the parties. Further, learned counsel for the petitioner company undertakes that no further cross examination on any other issue shall be done.

The objections raised on behalf of the respondent that the petitioner company moved the application under Section 311 Cr. P. C. only to delay the proceedings is not borne out from the record as it is not disputed that the respondent was discharged only on 04.11.2016 and the application under Section 311 Cr. P.C to recall him was moved within a week thereafter.

Accordingly, the present petition is allowed and the trial Court is directed to recall the respondent for further cross examination on one date on which the petitioner is granted liberty to cross examine him as above.

The above direction is subject to payment of Rs.5000/- by the petitioner as costs.

(Deepak Sibal)
Judge

May 11, 2017
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Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*